HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 422 of 2007

Dated 9th July, 2007

Between
Boraka Amaravathi

…Petitioner

and

The Machilipatnam Municipality,
Rep. By its Commissioner,
Machilipatnam, Krishna District, and, ors

…Respondent.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 422 of 2007

ORDER:

In this Writ Petition, the petitioner has questioned the legality of the order dated 18-12-2006 in Roc.No. 5942/2006 passed by the Commissioner, Machilipatnam Municipality.

It is the case of the petitioner that the third respondent was elected as Councilor to the 16th Ward in the elections conducted in the year 2005 to the Machilipatnam Municipal Council. The petitioner submitted a representation to the first respondent stating that the third respondent is having more than three children and as such he is to be disqualified for continuing as 16th Ward Councilor in view of the provision under Section 13-B of the A.P. Municipalities Act, 1965. On

the ground that, in spite of such representation, the Commissioner was not moving in the matter, the petitioner, earlier, filed Writ Petition No. 6065 of 2006 before this Court and the said Writ petition was disposed of by 0rder dated 23-11-2006 directing the first respondent-Commissioner to proceed further in pursuance of the representation made by the petitioner and take further steps in the matter. Referring to the orders of this Court dated 23-11-2006, present impugned order dated 18-12-2006 is passed rejecting the request of the petitioner on the ground that the petitioner had not filed representation within fifteen days from the date of declaration of results.

The order passed by the Commissioner is contrary to the provision under Section 17 of the A.P. Municipalities Act, 1965 and also directions issued by this Court. Disqualification of elected members is governed by various provisions of the A.P. Municipalities Act, 1965 and there is prescribed procedure under Section 17 of the Act for deciding questions of disqualifications of councilors. Once representation is made, it is obligatory on the part of the Commissioner to intimate allegations to the Member/councilor against whom disqualification is alleged. In the event of disputing the correctness of the allegation, the Commissioner, either on the decision of the council or with the approval of the Government, has to refer the matter to the District Judge having jurisdiction to decide such disputes. However, the Commissioner without taking steps in accordance with the procedure contemplated under Section 17 of the A.P. Municipalities Act, 1965, and, only on the ground that the representation was not filed within the time prescribed by the A.P. State Election Commission, rejected the representation of the petitioner. In that view of the matter, the impugned order dated 18-12-2006 in Roc.No. 5942/06 passed by

the first respondent is liable to be set aside and is accordingly set aside. The first respondent-Commissioner, Machilipatnam Municipality is directed to take steps forthwith in accordance with Section 17 of the A.P. Municipalities Act, 1965 and pass appropriate orders as expeditiously as possible in the matter, preferably within a period of two months from the date of receipt of a copy of this order.

Subject to the above direction, the Writ petition is disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 09-07-2007
Msnr.